

1 TAMI S. SMASON, CA Bar No. 120213  
tsmason@foley.com  
2 FOLEY & LARDNER LLP  
555 SOUTH FLOWER STREET, SUITE 3500  
3 LOS ANGELES, CA 90071-2411  
TELEPHONE: 213.972.4500  
4 FACSIMILE: 213.486.0065

5 Attorneys for Plaintiff Impex Enterprises  
Limited  
6  
7  
8  
9

10 UNITED STATES DISTRICT COURT  
11 CENTRAL DISTRICT OF CALIFORNIA

12 IMPEX ENTERPRISES LIMITED

13 PLAINTIFF,

14 V.

15 SONY PICTURES WORLDWIDE  
16 ACQUISITIONS, INC.; AND DOES 1-10,

17 DEFENDANTS.  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

) CASE No: 17-CV-1044

) **COMPLAINT FOR BREACH OF  
CONTRACT**

) **DEMAND FOR JURY TRIAL**

COMPLAINT FOR BREACH OF CONTRACT  
CASE NO. 17-CV-1044

1 Plaintiff Impex Enterprises Limited alleges as follows:

2 **INTRODUCTION**

3 1. This lawsuit follows the payment default of a contractual obligation by  
4 Defendant Sony Pictures Worldwide Acquisitions, Inc. ("Sony") related to the theatrical  
5 distribution of the motion picture "Wild Oats."

6 **THE PARTIES**

7 2. Plaintiff Impex Enterprises Limited ("Lender" or "Plaintiff") is a Bahamas  
8 corporation that was a production lender in connection with the production of Wild Oats.

9 3. Defendant Sony Pictures Worldwide Acquisitions, Inc., is a California  
10 corporation with its principal place of business in Los Angeles County, California. Sony  
11 acquired certain international distribution rights for specified territory pursuant to a  
12 Distribution Agreement, to which Lender was not a party.

13 4. The true names and capacities, whether individual, corporate, associate, or  
14 otherwise of defendants DOES 1 through 10, inclusive, are unknown to Lender, who  
15 therefore sue said defendants by such fictitious names. Lender is informed and believes  
16 and therefore alleges that each of the defendants designated as a DOE is legally  
17 responsible in some manner for the events and happenings herein referred to, and legally  
18 caused injury and damages proximately thereby to Lender as herein alleged.

19 **JURISDICTION**

20 5. This Court has personal jurisdiction over Sony because it engages in  
21 significant business throughout the State of California thus providing the State of  
22 California with general jurisdiction.

23 6. This Court has subject matter jurisdiction pursuant to 28 U.S.C. § 1332  
24 because Lender is a citizen of a foreign state, Sony is a citizen of the State of California,  
25 and the amount in controversy exceeds \$75,000, exclusive of interest and costs.

26 **VENUE**

27 7. Venue is proper in the Central District of California pursuant to 28 U.S.C. §  
28

1 1391(b) because Sony has its principal place of business in Los Angeles County and thus  
2 resides in the Central District of California for purposes of venue, and because a  
3 substantial part of the events and omissions giving rise to the claims occurred in the  
4 Central District of California.

### 5 **THE CONTRACT**

6 8. Effective July 1, 2014, the parties entered into an Interparty Agreement (“the  
7 IPA”) that provided in relevant part that Sony would make specified payments to Lender  
8 upon the occurrence of specified events. A true and correct copy of the IPA is attached  
9 hereto as **Exhibit 1**. All parties signed the IPA.

10 9. Paragraph 3.1.1 of the IPA requires Sony to pay a Mandatory Delivery  
11 Payment of \$855,000 “no later than ten (10) business days after the first date on which  
12 both of the following conditions have been satisfied: (x) Mandatory Delivery has been  
13 effected or deemed to have been effected in accordance with Paragraph 9 [of the IPA];  
14 and (y) the date of the Qualifying U.S. Theatrical Release [as defined in the IPA].”

15 10. Mandatory Delivery was effected during 2015 and the Qualifying U.S.  
16 Theatrical Release occurred on September 16, 2016. Therefore, the deadline for payment  
17 of the Mandatory Delivery Payment was September 30, 2016.

18 11. Paragraph 3.12 of the IPA further requires Sony to pay a \$95,000 Complete  
19 Delivery Payment no later than ten (10) business days after the date when both: (x) the  
20 Mandatory Delivery Payment conditions have been met; and (y) Complete Delivery has  
21 been effected or deemed effected.

22 12. Complete Delivery was effected during 2015 and the Mandatory Delivery  
23 Payment conditions were satisfied on September 16, 2016. Therefore the deadline for  
24 payment of the Complete Delivery Payment was September 30, 2016.

### 25 **FIRST CAUSE OF ACTION**

#### 26 **(Breach of Contract By Plaintiff against All Defendants)**

27 13. Lender repeats and incorporates by reference the allegations contained in the  
28

1 paragraphs above as though set forth fully herein.

2 14. Lender has performed all conditions, covenants, and promises required on its  
3 part to be performed in accordance with the terms and conditions of the IPA.

4 15. Paragraph 3.3 of the IPA provides that Sony waives, as to Lender, “all rights  
5 of offset, counterclaims, cross-collateralization and defenses and all rights to set up  
6 reserves ... to its obligation to pay [the amounts due to Lender] other than a failure of  
7 Mandatory Delivery and/or Complete Delivery....”

8 16. Both Mandatory Delivery and Complete Delivery were accomplished, as set  
9 forth above.

10 17. Defendants have breached the IPA by failing and refusing to make any part  
11 of the \$855,000 Mandatory Delivery Payment or the \$95,000 Complete Delivery  
12 Payment.

13 18. On November 2, 2016, Lender demanded in writing that Sony make the  
14 payments required under the IPA as set forth above.

15 19. On November 10, 2016, Sony refused in writing to make the payments.

16 20. The IPA requires Sony to pay interest from the date the payments were due,  
17 *i.e.*, September 30, 2016.

18 **PRAYER FOR RELIEF**

19 WHEREFORE, Lender prays for judgment as follows:

- 20 1. For judgment in favor of Lender and against all Defendants;  
21 2. For damages in the amount of \$950,000 plus interest from September 30,  
22 2016 according to proof;  
23 3. For attorneys’ fees and costs of suit incurred herein; and  
24 4. For such other and further relief as the Court may deem just and proper.  
25  
26  
27  
28

1 DATE: FEBRUARY 8, 2017

FOLEY & LARDNER LLP  
TAMI S. SMASON

2  
3  
4 /S/ TAMI S. SMASON

TAMI S. SMASON  
Attorneys for Plaintiff Impex Enterprises  
Limited

5  
6 **DEMAND FOR JURY TRIAL**

7 Plaintiff hereby demands a trial by jury.

8  
9 DATE: FEBRUARY 8, 2017

FOLEY & LARDNER LLP  
TAMI S. SMASON

10  
11  
12 /S/ TAMI S. SMASON

TAMI S. SMASON  
Attorneys for Plaintiff Impex Enterprises  
Limited